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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/774,768
Filing Date: February 09, 2004
Appellant(s): ASHTON ET AL.

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Charles R. Matson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20 March 2007 appealing from the Office action mailed 29 September 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The arguments presented in the brief filed 20 March 2007 (see pages 6-7) are convincing and thus the rejection of claims 1, 6, 27, 29-30 under 35USC 102(b) over Yoshikazu are removed.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0091368

LAVON et al.

7-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-6, and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by LaVon et al. (US 2002/0091368). Regarding claims 1-2 and 27 LaVon discloses a disposable absorbent article such as a diaper 20 (page 2, paragraph 0026) having belt zone 630 [belt zone is adjacent flap 620 in figure 7] comprising (a) a chassis having an absorbent core positioned between liquid pervious top sheet 22 and liquid impervious back sheet 24 (page 3, paragraph 0036, page 4, paragraph 0041, lines 2-4 and page 5, paragraph 0046, lines 1-2); (b) at least one sidewall disposed adjacent the chassis that connects front region 32 to back region 34 and thus forming leg openings and a waist edge (page 3, paragraph 0037, lines 1-5 and figure 1); said sidewall comprising an ear or panel (figures 1 and 3), and (c) wherein at least one handle is a flap 620 comprising a stratum/layered panel members (page 13, paragraph 0115, lines 14-21 and figure 8), wherein the flap forms a gap between the stratum and the chassis

(figure 7), wherein the flap 620 is joined to the garment-facing surface of the article 600 by opposing longitudinal welds/fasteners 625 (page 13, paragraph 0115, lines 20-21) and is disposed proximate opposing distal longitudinal edges of the flap (figure 7), wherein the handle is disposed adjacent the sidewall (figures 7-8) and wherein the absorbent diaper is a pull-on garment such as training pants (page 1, paragraph 0010, lines 1-5).

Regarding claim 3 LaVon discloses back sheet 24 is a non-woven material, thermoplastic film (page 5, paragraph 0046, lines 9-13).

Regarding claims 5-6 and 25-26 LaVon discloses the flap stratum is a portion of the belt zone that has been folded away from the wearer-facing surface of the article at hingepoints [hingepoint is disposed at a location where perimeter 710 meets adhesive/lateral weld 720] (page 14, paragraph 0123, lines 6-8 and figure 10) and wherein the flap comprises a multiple construction wherein the stratum is discrete (figure 10).

Regarding claims 23 and 28 LaVon discloses flap 620 has a lateral width greater than a longitudinal length and the handle laterally spans the width of the sidewall (figure 7).

Regarding claim 24 LaVon discloses blocking layers 670 forms cut through a portion of the stratum (figure 9 and page 13, paragraph 0117).

Regarding claims 29-30 LaVon discloses more than one ear connected to each other by welding means such as tab fasteners 640 (figure 8).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-22 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaVon et al. (US 2002/0091368; herein 'LaVon'). Lavon *does not expressly disclose* instructions. Since the instructions (printed matter) are not functionally related to the structure of the kit, the claimed invention does not patentably distinguish from the prior art reference(s). In order for the instructions (printed matter) to impart patentability to the kit, there must be a new and non-obvious functional relationship between the printed matter and some element of the kit. Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). See also MPEP 2121.01 (III).

(10) Response to Argument

In response to Appellant's argument that Lavon does not teach or suggest at least one handle for assisting in the application of article onto a wearer, wherein the handle is a flap as recited in lines 8-9 of Claim 1 (see Remarks pages 3-4), Examiner notes that since Appellant has not set forth the term "handle" with reasonable clarity, deliberateness, and precision, the term has been given its plain meaning consistent with MPEP 2111.01 to include any structure that is capable of being grasped by the user. Since the flap 620 of LaVon is a protruding structure which must be lifted and opened in

order to pull back panel 430 out of the article through opening 610 (page 13, paragraph 0115, lines 17-23, figure 7).

In response to Appellant's argument that the Office action mistakenly equates the fasteners 625 with the "longitudinal welds" recited in lines 10-11 of Claim 1 (see Remarks pages 4-5), it is noted that Appellant has noted 2 different types of welds in the present invention-one weld for seam 32 (set forth on page 6 of the specification) and another "weld" for the flap as recited in claim 1 (see page 14, lines 13-14). Appellant states that "the flap 200 may be *welded* by an adhesive, heat bonds, pressure bonds, ultrasonic bonds, *dynamic mechanical bonds*, or combinations thereof (emphasis added see page 14, lines 13-14 of the instant specification). Since Lavon discloses fasteners 625 to be releasable hook and loops/VELCRO or *adhesive* strips (see page 14, paragraph 0122, lines 24-30), the fasteners are dynamic mechanical bonds or "longitudinal welds" as required by Appellant's Claim 1.

In response to Appellant's argument that the Office relies upon figure 10 in the explanation of the rejection of claims 5-6 and 25-26 and flap 620 is not shown in this embodiment (see Remarks pages 5-6), it is noted that flap includes various embodiments (as seen in figures 7-10) and is labeled element 620, 720, etc.

In response to Appellant's argument that Lavon doesn't meet the limitations of the dependent claims since they are dependent on Claim 1 (see Remarks pages 6 and 8-9), see the argument above with respect to Claim 1.

(11) Related Proceeding(s) Appendix

Art Unit: 3761

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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